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Nos. 73-550, 73-867, 73-868, 73-871, 73-872, 73-874

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

TEXASGULF INC., ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY OF TEXASGULF INC. TO BRIEFS IN OPPOSITION OF RESPONDENT AND INTERVENOR

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Respondent Federal Power Commission (FPC) and United Gas Pipe Line Company (United) oppose the grant of the petitions for writ of certiorari filed herein. Their briefs warrant additional comment.

I.

THE FPC WILL NOT LOSE THE JURISDICTION OVER CURTAILMENTS IT ALREADY ENJOYS

United alleges that if its Green System-East is "Hinshawed", FPC curtailment authority over substantial industrial volumes will be destroyed, leaving a regulatory gap. (United Br. pp. 12-13). The argument is quite unrealistic.

The FPC has already held, with reference to its curtailment jurisdiction over gas sold by United, that it has no jurisdiction over what happens to gas after it is delivered to a wholesale customer. This determination took the form of a refusal by the Commission to approve a term of United's proposed tariff which would have allowed United to prevent a local public utility from reselling gas to a direct industrial customer United was curtailing

> "Our jurisdiction over the disposition of natural gas ends when it reaches the hands of a nonjurisdictional person such as a distributor purchasing for resale. This language would in effect attempt to extend our jurisdiction over the disposition of gas by a local distributor, a matter within the province of the local regulatory body. We will of course consider the past and planned disposition of volumes by the customers when ruling upon allocations for the various customers, but after allocation among United's customers, we leave for the states or other local bodies the job to oversee the distribution of that gas by the customers at the local level. . . ."[1]

The FPC exercises its curtailment jurisdiction—as it does its rate jurisdiction—at the point where the delivery of gas is made by the pipeline company to the customer. The curtailment plan of the pipeline company serves to determine how much gas will be delivered to the pipeline's customer. It does not seek to require that the gas actually be consumed by the end user whose need the FPC considered in allocating the available gas among the pipeline's customers.

United curtailed service on its Green System-East long before the FPC claimed jurisdiction in this pro-

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[1] *United Gas Pipe Line Co.*, 46 F.P.C. 786, 807 (1971).

ceeding over that system. FPC jurisdiction was not a prerequisite to curtailment by United.

The FPC will retain jurisdiction under Section 1(c) of the Natural Gas Act to determine how much gas is delivered into the Green System-East, just as it now retains similar jurisdiction over United's deliveries into the systems of wholesale customers like Mississippi Valley Gas Company, Mobile Gas Service Corporation and Clarke-Mobile Gas District which are exempt from FPC jurisdiction and which serve direct industrial customers in the States of Mississippi and Alabama.

II.

UNITED'S SALES AND SERVICE ON THE GREEN SYSTEM-EAST ARE "SUBJECT TO REGULATION BY A STATE COMMISSION"

To be exempt under 1(c) of the Natural Gas Act, the sales, service and facilities of the pipeline company must be "subject to regulation by a State Commission."[2] This language is intentionally consistent with the definition of State commission in the statute[3] and was used on the recommendation of the National Association of Railroad and Utilities Commissioners.[4]

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[2] Petitioners are not here seeking exemption from FPC jurisdiction for producers selling gas to United, as the FPC suggests (Br. p. 15). All gas volumes sold by producers to United and resold by United on the Green System-East necessarily are "ultimately consumed within" the State within the meaning of Section 1(c).

[3] Section 2(8) of the Natural Gas Act defines "State commission" as "the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality." 15 U.S.C. 717a(8).

[4] Hearing on Natural Gas Act (Distribution) before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 83d Cong., 1st Sess., p. 10 (1953).

Enactment of Section 1(c) was supported by a representative of the Louisiana Public Service Commission who indicated to Congress that the state commission then had jurisdiction requisite to enjoyment of the proposed exemption.[5] We anticipate that the State of Louisiana, in its reply brief, will advise this Court of the current state of evolving local regulatory law affecting direct sales in Louisiana in times of gas shortage.[6]

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted.

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[5] *Id.* at 32.

[6] The FPC does not deny it has only limited jurisdiction over direct sales (see FPC Br. n. 11), a jurisdiction which is not reduced by "Hinshawing" the Green System-East. See discussion under Section I, *supra*.